

OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE

PURPOSE

SECTION B

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I. CONSTITUTIONAL FOUNDATION

1. Article I, Section 8, Clause 1. Congress has the power to tax and spend.
2. Article I, Section 9, Clause 7. No money shall be drawn from the Treasury, but in consequence of appropriations made by law.

II. STATUTORY FOUNDATION

1. 31 U.S.C. § 1301(a). Purpose statute.
2. 10 U.S.C. § 2805. Minor military construction.
3. 10 U.S.C. § 114(a). Authorizations required.
4. 31 U.S.C. § 3302(b). Miscellaneous receipts.
5. 18 U.S.C. § 209. Salaries of Government employees.
6. 31 U.S.C. § 1535. Economy Act.
7. 10 U.S.C. § 2608. Donations.

III. REGULATORY FOUNDATION

1. AR 37-100-FY
2. AR 37-47

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IV. STATUTORY FRAMEWORK

A. PURPOSE OF EXPENDITURE MUST BE PROPER

1. "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."
31 U.S.C. § 1301(a).
2. Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others.
3. As an appropriation must be derived from an act of Congress, it is up to Congress to determine the purpose for which an appropriation may be used.

B. STATEMENT OF PURPOSE

1. Appropriations acts are of paramount importance in determining purpose.
 - a. Appropriations are differentiated by service (Army, Navy, etc.), component (Active, National Guard, etc.), and purpose (Operation and Maintenance, Procurement, etc.).
 - b. Types of appropriations:
 - (1) Defense Appropriations Act
 - (a) Military Personnel - Pay for personal needs. Examples: subsistence, initial clothing issue, pay, quarters allowance, PCS travel.

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- (b) Operation and Maintenance (O&M) - Pay for day-to-day operations. Examples: pay and benefits of civilian employees, awards, contractual services, utilities, maintenance (recurrent work to prevent deterioration), repair (overhaul, reprocessing, or replacement to reverse deterioration), TDY travel, supplies, paper, cleaning materials, repair parts for all equipment, office machines (under \$50,000), and many TDA and TO&E items.
 - (c) Procurement - Purchase TO&E, high-dollar value, mission-essential, tactical items, which are intensively managed. Examples: tanks, jeeps, sedans, weapons, rifles, ammo, artillery, missiles, gun tubes, etc.
 - (d) Research, Development, Test, and Evaluation (RDT&E) - Examples: basic research, development of new equipment, testing new, civilian or foreign equipment, and the evaluation of equipment in use.
- (2) Military Construction Appropriations Act
- (a) Pay for any new or continuing construction projects listed as line items in the Military

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Construction Appropriations
Act and authorized in the
Military Construction
Authorization Act.

- (b) A statutory exception exists for unspecified minor construction. 10 U.S.C. § 2805. DoD Directive 4270.24, AR 415-35, AFR 86-1.
 - (c) Projects of \$1.5 million or less may be done from Military Construction Appropriations although not specified in the act.
 - (d) Projects of \$300,000 or less may be done from Operation and Maintenance funds in the Defense Appropriations Act.
- 2. Authorization acts usually accompany appropriations acts and may include clarifying language.
 - a. Appropriations for certain purposes (aircraft, vessels, missiles, research and development) require separate statutory authorization. 10 U.S.C. § 114(a).
 - b. When funds are authorized and appropriated with different limitations, the more restrictive limitation controls.
- 3. Legislative History is the record of congressional deliberations on a bill.

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- a. It consists of:
 - (1) Conference Report
 - (2) Committee Reports
 - (3) Floor debate
 - (4) Hearings
 - b. Legislative History is not necessarily binding on the Executive Branch.
 - c. When statutory language is clear, there is no need to resort to legislative history to determine congressional intent. LTV Aerospace Corp, 55 Comp. Gen. 307 (1975).
 - d. When statutory language is not clear, or would have an absurd result, legislative history should be consulted to determine congressional intent. Federal Aviation Administration--Permanent Improvements to Leasehold, 69 Comp. Gen. 673 (1990).
4. The President's budget and the budget justifications contain detailed descriptions of the purpose proposed for the requested appropriations. The budget contains computer tables showing where funds are to be spent called P-1 and R-1 documents.

C. FUNDING CITATION

- 1. Identifies the source of funds intended for a particular use.

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2. Army Regulation (AR) 37-100-FY; AFR 172-1, Volume 1; and NAV COMPT 7130.25D assign codes used to track various appropriations.
3. Example:

2152020 21 1234 **SEE CROSSWALK** 2610 S18001

2152020 is the Appropriation Symbol

21 is the Operating Agency Code

1234 is the Allotment Number

SEE CROSSWALK is the Program Element

2610 is the Element of Resource

S18001 is the Fiscal Station Number
4. The Appropriation Symbol is the most important part of the funding cite.
 - a. The first two digits reveal the military department.
 - (1) 21 - Army
 - (2) 17 - Navy
 - (3) 57 - Air Force
 - (4) 18 - National Guard
 - (5) 97 - Department of Defense
 - b. The third digit reveals the fiscal year.
 - (1) 0-9
 - (2) X - No year

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- c. The next four digits reveal the type of appropriation.
 - (1) 2010 - Military Personnel,
Army
 - (2) 2020 - Operation and Maintenance,
Army
 - (3) 2050 - Military Construction,
Army

V. DETERMINING THE PROPER PURPOSE

- A. TEST FOR A PROPER PURPOSE. Secretary of the Interior, 34 Comp. Gen. 195 (1954).
 - 1. The appropriation is made for a particular purpose or the expenditure is necessary and incident to the general purpose.
 - 2. The expenditure is not prohibited by law.
 - 3. The expenditure is not otherwise provided for, that is, does not fall within the scope of some other appropriation.
- B. THE NECESSARY EXPENSE RULE
 - 1. "... (T)he standard for measuring the propriety of a particular expenditure not specified in the statute is the "necessary expense" test traditionally used in determining purpose availability under 31 U.S.C. § 1301(a). Under this test, an expenditure is permissible if it is reasonably necessary in carrying out an authorized function or will contribute materially to the effective accomplishment of

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that function, and if it is not otherwise prohibited by law." Internal Revenue Service Federal Credit Union--Provision of Automatic Teller Machine, 66 Comp. Gen. 356 (1987).

- a. Every item of expenditure need not be specified in an appropriation act. The spending agency has reasonable discretion in determining how to carry out the purpose of an appropriation. Department of the Army--Purchase of Commercial Calendars, 62 Comp. Gen. 566 (1984), Defense Nuclear Agency-Strategy of Career Transition, 68 Comp. Gen. 127 (1988).
- b. An appropriation made for a specific purpose is available for expenses necessarily incident to achieving that purpose. MG Anton Stephan, 6 Comp. Gen. 619 (1927), Secretary of State, 42 Comp. Gen. 226 (1962).
2. A necessary expense does not have to be the only way or even the best way to achieve the purpose of the appropriation. Secretary of the Interior, 34 Comp. Gen. 599 (1955). It must, however, be more than merely desirable or important. Secretary of Commerce, B-42439, July 8, 1944 (unpub.). Usually, it is in direct support of the agency's mission. Utility Costs Under Work-at-Home Program, 68 Comp. Gen. 505 (1989).
3. Determinations are fact/agency/purpose specific and made on a case-by-case basis.
4. When new or additional duties are imposed by legislation or Executive Order, and no additional appropriations are provided, the current appropriation may be charged if a

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sufficient relationship exists. Director, National Science Foundation 46 Comp. Gen. 604 (1967), The Honorable Bill Alexander 63 Comp. Gen. 422 (1984).

C. EXPENDITURES PROHIBITED BY LAW

1. Constitution.
2. Permanent Legislation.
3. Annual Appropriations Acts.
4. Comptroller General Decisions.

D. EXPENDITURES OTHERWISE PROVIDED FOR

1. A specific appropriation must be used for a particular purpose to the exclusion of a more general appropriation which might otherwise be available. The Honorable Bill Alexander 63 Comp. Gen. 422 (1984).
 - a. General appropriations are not available to augment more specific ones. Secretary of the Navy 20 Comp. Gen. 272 (1940).
 - b. The fact that a specific appropriation is exhausted is immaterial. Secretary of Commerce, 36 Comp. Gen. 386 (1956).
 - c. The limitation applies even if a specific appropriation is included in a more general appropriation. Secretary of the Interior, 20 Comp. Gen. 739 (1941).

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2. An agency may choose either of two equally and reasonably available appropriations for an expenditure not specifically mentioned in either. Payment of SES Performance Awards of the Railroad Retirement Board's Office of Inspector General, 68 Comp. Gen. 337 (1989).
 - a. Agency discretion is not questioned. Secretary of Agriculture 18 Comp. Gen. 298 (1938).
 - b. Once a selection is made, that appropriation must be used to the exclusion of the other. Recording Obligations Under EPA Cost-Plus-Fixed-Fee Contract, 59 Comp. Gen. 518 (1980). The selection is binding even after the chosen appropriation is exhausted. Honorable Clarence Cannon B-139510, May 13, 1959 (unpub.).

E. FREQUENTLY QUESTIONED EXPENSES

1. Travel - Reimbursement for travel expenses incurred on official travel is authorized by statute. Before this legislation was enacted, such expenses were reimbursable as a necessary expense. 4 Comp. Gen. 475 (1898).
2. Attendance at Meetings and Conventions -
 - a. Government employees may attend non-government sponsored meetings at government expense if it is (1) part of an authorized training program (5 U.S.C. § 4109) or (2) related to agency function or management (5 U.S.C. § 4110).

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- b. Government employees may attend government sponsored meetings as a "necessary expense."
 - c. Military personnel may attend non-government sponsored meetings with administrative approval. 37 U.S.C. § 412. Approval is not needed for government meetings. Secretary of the Navy, 50 Comp. Gen. 527 (1971).
3. Entertainment - appropriated funds may not be used for entertainment except when specifically authorized by statute and also authorized or approved by the proper administrative officer. Administrator, Veterans Administration 43 Comp. Gen. 305 (1963).
- a. Coffee and donuts unauthorized. Department of the Army--Claim of the Hyatt Regency Hotel, December 22, 1989 (unpub.).
 - b. Live musical performance exception for agency EEO cultural and ethnic programs. Internal Revenue Service--Live Entertainment and Lunch Expense for National Black History Month 60 Comp. Gen. 303 (1981).
 - c. Fireworks unauthorized. Navy Fireworks Display, B-205292, 82-2 CPD 1, January 8, 1982.
 - d. Refreshments both allowed and not allowed. Refreshments at Awards Ceremony, 65 Comp. Gen. 738 (1986), Administrator, Veterans Administration 43 Comp. Gen. 305 (1963).

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4. Clothing - Most items of wearing apparel are the personal responsibility of an employee. However, there are three statutes under which purchase of apparel may be authorized: 5 U.S.C. § 7903 (special clothing for hazardous occupations), 5 U.S.C. § 5901 (uniform allowances), and Occupational Safety and Health Act of 1970 (protective clothing).
 - a. Safety shoes authorized. Internal Revenue Service--Purchase of Safety Shoes, 67 Comp. Gen. 104 (1987).
 - b. Evening clothes for diplomats okay. United States Embassy, London--Rental of Ceremonial Dress, 68 Comp. Gen. 638 (1989).
5. Decorations - May be purchased as long as they are not for personal convenience or satisfaction.
 - a. Art work consistent with work-related objects okay. Purchase of Decorative Items for Individual Offices at the United States Tax Court, 64 Comp. Gen. 796 (1985).
 - b. Personal Christmas cards not proper expenditures. The Honorable Fortney H. Stark, 64 Comp. Gen. 382 (1985).
 - c. Seasonal decorations proper. Department of State and General Services Administration--Seasonal Decoration, 67 Comp. Gen. 87 (1987).
6. Business cards - a personal expense and not chargeable to public funds. Forest Service--Purchase of Information Cards, 68 Comp. Gen.

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467 (1989), Promotional and Business Expenditures in the Sale of Commemorative Coins, 68 Comp. Gen. 583 (1989). But see NGR (AR) 601-1m 5-6e, allowing business cards for production recruiters.

7. Telephone - Except for long-distance official business calls, installation and charges in a private residence are generally not allowed. 31 U.S.C. § 1348. Telephone in temporary quarters allowed. Timothy R. Manns-- Installation of Telephone Equipment in Employee Residence, 68 Comp. Gen. 307 (1989).

VI. AUGMENTATION OF APPROPRIATIONS

- A. AUGMENTATION GENERALLY INVOLVES EXPENDITURES IN EXCESS OF THE AMOUNT APPROPRIATED FOR A PARTICULAR PURPOSE.

- B. AUGMENTATION OF ONE APPROPRIATION BY ANOTHER APPROPRIATION OR BY AN OUTSIDE SOURCE IS PROHIBITED. WILDER v. UNITED STATES, 16 CT. CL. 528 (1880), Chairman, United States Atomic Energy Commission, 37 Comp. Gen. 155 (1957), Administrator, Veterans Administration, 45 Comp. Gen. 255 (1965), Donor Payments to Internal Revenue Service for Employee Meeting Attendance Costs, 55 Comp. Gen. 1293 (1976).

1. Constitution violated by an agency undercutting the congressional "power of the purse" in circuitously exceeding the amount Congress has appropriated for that activity by augmentation.

"No money shall be drawn from the Treasury except in consequence of appropriations made by law." U.S. CONST. Article I, Section 9, Clause 7.

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2. Purpose Statute violated by using one appropriation to pay costs associated with the purposes of another appropriation. 31 U.S.C. § 1301(a). See also: Nonreimbursable Transfer of Administrative Law Judges 65 Comp. Gen. 635 (1986), Department of Health and Human Services--Detail of Office of Community Services Employee 64 Comp. Gen. 370 (1985).
3. Miscellaneous Receipts Statute violated by retaining government funds received from source outside of the agency.

"Except as...(otherwise provided)...an official or agent of the government receiving money for the government from any source shall deposit the money in the Treasury as soon as practical without any deduction for any charge or claim." 31 U.S.C. § 3302(b). See also: Use of Appropriated Funds by Air Force to Provide Support for Child Care Centers for Children of Civilian Employees 67 Comp. Gen. 443 (1988), Bureau of Alcohol, Tobacco, and Firearms--Augmentation of Appropriations--Replacement of Autos by Negligent Third Parties 67 Comp. Gen. 510 (1988).
4. Prohibition violated by paying, contributing to, or supplementing the salary of a government officer or employee as compensation for official duties from any source other than the government of the United States. 18 U.S.C. § 209.

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- C. STATUTORY EXCEPTIONS TO THE PROHIBITION ON AUGMENTATION
1. Economy Act authorizes inter-agency orders and the ordering agency must reimburse the performing agency for costs of goods or services. 31 U.S.C. § 1535.
 2. Revolving Funds providing working capital for operation of certain activities must be reimbursed for costs of goods or services when provided. Administrator, Veterans Administration, 40 Comp. Gen. 356 (1960).
 3. Bond forfeiture proceeds may be retained to extent necessary to cover costs of the United States. 16 U.S.C. § 579c. See also: USDA Forest Service--Authority to Reimburse General Appropriations With the Proceeds of Forfeited Performance Bond Guarantees 67 Comp. Gen. 276 (1988), National Park Service--Disposition of Performance Bond Forfeited to Government by Defaulting Contractor, 64 Comp. Gen. 625 (1985).
 4. Donations to the government are permitted for the United States as a whole but prohibited for individual agencies without statutory authority. The Secretary of Defense may accept gifts but they may not be expended until appropriated. 10 U.S.C. § 2608.
- D. COMPTROLLER GENERAL EXCEPTIONS TO THE PROHIBITION ON AUGMENTATION
1. Replacement contract excess procurement costs. Bureau of Prisons--Disposition of Funds Paid in Settlement of Breach of Contract Action, B-210160, 84-1 CPD 91, Funding of Replacement Contracts 68 Comp. Gen. 158 (1988).

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2. Refund for erroneous payment. International Natural Rubber Organization--Return of United States Contribution 62 Comp. Gen. 70 (1982), Defense Logistics Agency--Disposition of Funds Paid in Settlement of Contract Action 67 Comp. Gen. 129 (1987).
3. Replacement for property damaged by a third party in lieu of cash. Bureau of Alcohol, Tobacco, and Firearms--Augmentation of Appropriations--Replacement of Autos by Negligent Third Parties 67 Comp. Gen. 510 (1988).
4. Funds held in trust for third parties. The Honorable John Dingell 60 Comp. Gen. 15 (1980).
5. Certain nonreimbursable details. Department of Health and Human Services--Detail of Office of Community Services Employees 64 Comp. Gen. 370 (1985).
 - a. To Congress. Detail of Officers and Employees to Congressional Committees 21 Comp. Gen. 954 (1942).
 - b. Between executive branch agencies where similar matters involved. Department of Health and Human Services--Detail of Office of Community Services Employees 64 Comp. Gen. 370 (1985).
 - c. For brief periods when necessary services cannot be obtained by other means and the number of persons and costs are minimal. Department of Health and Human Services--Detail of Office of Community Services Employees 64 Comp. Gen. 370 (1985).

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VII. SPECIAL PROBLEMS

A. CONTINGENCY FUNDS

1. Appropriations from the Operations and Maintenance account available for emergency or extraordinary expenses which cannot be anticipated or classified.
2. Controlled by:
 - a. 10 U.S.C. § 127.
 - b. DoD Directive 7250.13, Official Representational Funds (22 March 1984).
 - c. AR 37-47, Contingency Funds of the Secretary of the Army (15 January 1990).
3. Limitation .0012 -- Miscellaneous Expenses, Category A. For official entertaining at times of national holidays, facilities dedications, and distinguished guest visits, and for purchase of authorized gifts and mementos.
 - a. Authorized guests are distinguished and prominent citizens who have made a substantial contribution to the Nation or DoD, and dignitaries and officials of local, county, state, Federal, and foreign governments.
 - b. Rules provide certain ratios of DoD personnel to authorized guests and prohibitions on the use of funds.
4. Limitation .0014 -- Miscellaneous Expenses, Category B. For miscellaneous expenses, other than official representation, not provided for in other appropriations.

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B. COMMUNITY RELATIONS AND PUBLIC AFFAIRS FUNDS

1. Appropriations available for the cost of participating in community relations events.
2. Controlled by: AR 360-61, Community Relations (15 January 1987).

VIII. CONCLUSION